IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 186 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPORATION

Versus

PRAFULBHAI NAGARBHAI

Appearance:

1. Appeal from Order No. 186 of 1997

MR PRASHANT G DESAI for Petitioner No. 1

NOTICE SERVED for Respondents No. 1-6,8

NOTICE UNSERVED for Respondent No. 7

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 08/11/2001

ORAL JUDGEMENT

Respondents-plaintiffs filed Regular Civil Suit No.387/97 against the present appellant-original -defendant-Corporation. On 24.1.1997 notice of motion

Ex.6 was carried out seeking temporary injunction restraining the appellant-Corporation and its agents, servants from demolishing the suit premises owned by the plaintiffs and from causing any obstruction to them in carrying out their business. Notice was issued at 12.00 p.m. making it returnable at 3.00 p.m. on the same day However, as per the report of the Court Commissioner, the property in question was already demolished by the Corporation, therefore, the matter was fixed for further hearing and reply on 27.1.1997 by the learned trial Judge.

In view of the fact that the shops were demolished they filed application Ex.25 seeking amendment in notice of motion, which was granted on 30.1.1997. The same was strongly resisted by Corporation. The learned Trial Judge rejected the contention of the plaintiffs for providing alternative accommodation at an interim stage who have made the encroachment on the public road obstructing the development plan of the city.

However, surprisingly, the learned Trial Judge partly allowed the notice of motion and ordered the Corporation to pay Rs.5,000/= each to all the plaintiffs by way of adhoc compensation within 15 days from the date of his order. As according to him, relief prayed for by the plaintiff in notice of motion cannot be granted at the interim stage but in the interest of justice they should be paid adhoc compensation to mitigate their grievance. This approach of the learned Trial judge is wholly erroneous, therefore, the impugned order was required to be quashed and set aside.

This appeal was admitted with interim relief granted in favour of the appellant-Corporation on Civil Application No.4019/97 filed in it whereby the impugned order passed by the learned Trial Judge directing the appellant-Corporation to pay compensation of Rs.5,000/= to each of the plaintiff is stated. All the respondents except respondent No.7 are served. But no one appears for them.

When the notice issued to the respondent No.7 could not be served then in ordinary circumstances, this court would have waited till the respondent No.7 is served, but it would be an exercise in futility. He is similarly situated with all other seven plaintiffs who are duly served and none of them has chosen to appear before this court either personally or through their counsel. In that view of the matter, this court is fully convinced that the impugned order passed by the learned

Trial Judge cannot be sustained. Then without hesitation it has to be quashed. Accordingly, this appeal is allowed. The impugned order passed by the learned trial Judge below notice of motion filed in Regular Civil Suit No.387/97 is hereby quashed and set aside.

However, the learned Trial Judge is directed to decide the Regular Civil Suit No.387/97 as early as possible and not later than 31.12.2002. Parties shall fully cooperate for final disposal of the suit. Civil Application stands disposed of in terms of the order passed in main appeal from Order.

(B.J.Shethna, J.)

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